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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/587,318	06/05/2000	Kiril A. Pandelisev	PHOENIX	8159

7590

04/08/2004

James C Wray
1493 Chain Bridge Road
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EXAMINER

EVANISKO, GEORGE ROBERT

ART UNIT	PAPER NUMBER
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3762

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DATE MAILED: 04/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/587,318

Applicant(s)

PANDELISEV, KIRIL A.

Examiner

George R Evanisko

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-85 and 87-105 is/are pending in the application.
- 4a) Of the above claim(s) 42-83 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-41, 84, 85 and 87-105 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

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DETAILED ACTION

Response to Arguments

In view of the appeal brief filed on 1/15/04, PROSECUTION IS HEREBY REOPENED.

New grounds of rejection are set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) request reinstatement of the appeal.

If reinstatement of the appeal is requested, such request must be accompanied by a supplemental appeal brief, but no new amendments, affidavits (37 CFR 1.130, 1.131 or 1.132) or other evidence are permitted. See 37 CFR 1.193(b)(2).

Election/Restrictions

Claims 42-83 have been withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in Paper No. 4.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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Claims 1-4, 26, 39, 84, and 87-105 are rejected under 35 U.S.C. 102(b) as being anticipated by Ostrow et al (5344384). Ostrow describes and shows two individual controls/generators for the EM cells in figure 6 and an individual generator/control for the electrostimulation pads in figure 11, mounted in a console, 24, that is mounted on one base wrapped around the waist (figure 1) and remote from the other bases. In addition, it is inherent that the system contain some sort of controls, such as software or hardware controls (the computerized chip, column 4), to provide the pulses to the EM or electrostimulation cells since the batteries alone could not provide the pulses to the cells.

Claims 1-3, 26, 32, 84, 87, and 89-105 are rejected under 35 U.S.C. 102(b) as being anticipated by Browner (3025857). Browner is capable of meeting the functional use recitations presented in the claims. In addition, for claims 89-101, the controls inherently provide control of the pulse characteristics, such as pulse shape, width, frequency modulation, etc, since the pulses inherently have these properties.

Claims 1-6, 16, 22-25, 27-34, 36, 38, 39, 84, and 87-105 are rejected under 35 U.S.C. 102(b) as being anticipated by Russek (4381012). Russek is capable of meeting the functional use recitations presented in the claims. In addition, Russek states in columns 4 and 6 that "dual" channel devices/controls can be used and therefore will provide the independent controls. In addition, the controls inherently provide control of the pulse characteristics.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

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having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5, 6, 34, 36, and 85 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Ostrow et al (5344384). Ostrow shows in figure 1 the console/power source mounted and connected to the base on one end of the base. In addition, for claim 85, it is inherent that the type, frequency, pulse, etc. of the energy is varied according to the size and type of wounded tissue and proximity of the cell to the wounded tissue, since the device is meant to heal the wounded tissue.

In the alternative, Ostrow discloses the claimed invention except for the power source mounted or connected to the base (one end of the base) and varying the type, frequency, pulse characteristics, etc of the energy according to the size and type of wounded tissue and proximity of the cell to the wounded tissue. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the therapy device as taught by Ostrow, with the power source mounted or connected to the base and varying the type, frequency, pulse characteristics, etc of the energy according to the size and type of wounded tissue and proximity of the cell to the wounded tissue since it was known in the art that therapy devices mount or connect the power source to the base to provide a single therapy system that allows the patient to conveniently and easily carry the therapy unit and power source in one unit and/or to prevent signal/power cords from becoming entangled and since it was known in the art that therapy devices vary the type, frequency, pulse characteristics, etc of the energy according to the size and type of wounded tissue and proximity of the cell to the wounded tissue in order to provide an effective therapy that heals the wound and neither causes further damage to the wound or not enough energy to heal the wound.

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Claims 7-15, 38, and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ostrow et al in view of McLeod et al (5518496).

Ostrow discloses the claimed invention having the controls connected to the batteries, a field generator coil, coil enclosure and insulation except for the self contained controls in each cell and having shielding between control circuits and the sensors in the base with the frequency and field strength being variable with increasing frequencies in proximity to the wounds to be treated. McLeod teaches that it is known to use self contained controls in each cell connected to the battery, cables connected to the control circuit, a field generator coil, shielding between components, a coil enclosure/housing and insulation to provide a lightweight, mobile therapy system that does not restrict patient movement and to provide sensors for each cell to vary the therapy based on the output signal with the frequency and field strength being variable with increasing frequencies in proximity to the wounds to be treated to provide the appropriate and correct therapy. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the therapy device as taught by Ostrow, with the self contained controls in each cell connected to the battery, cables connected to the control circuit, a field generator coil, shielding between components, a coil enclosure/housing and insulation and the sensors for each cell with the frequency and field strength being variable with increasing frequencies in proximity to the wounds to be treated as taught by McLeod, since such a modification would provide a therapy device with self contained controls connected to the battery, cables connected to the control circuit, a field generator coil, shielding between components, a coil enclosure/housing and insulation to provide a lightweight, mobile therapy system that does not restrict patient movement, and since such a modification would provide a

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therapy device with sensors for each cell to vary the therapy based on the output signal with the frequency and field strength being variable with increasing frequencies in proximity to the wounds to be treated to provide the appropriate and correct therapy.

Claims 16, 22-25, 27-34 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ostrow et al in view of Russek (4381012).

Ostrow discloses the claimed invention except for control conduits mounted on the base/cell to carry power and/or signal cables and an on/off switch connected to the cables, the controls mounted on one or both ends of the base, and remote controls connected to the controls. Russek teaches that it is known to provide control conduits mounted on the base/cell to carry power and/or signal cables (figures 5-12) to provide a therapy base that prevents the power and/or signal cables/wires from becoming entangled with the patient or other elements of the system and to provide the controls mounted on one or both ends of the base to provide a self contained unit that is easy to operate without control wires becoming entangled and teaches that it is known to provide remote controls (on/off, figure 13) connected to the controls for controlling the cells remotely to allow more convenient control by a patient who has limited movement. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the therapy device as taught by Ostrow, with control conduits mounted on the base/cell to carry power and/or signal cables, the controls mounted on one or both ends of the base, and the remote controls (on/off) connected to the controls as taught by Russek, since such a modification would provide a therapy device with control conduits mounted on the base/cell to carry power and/or signal cables to provide a therapy base/cell that prevents the wires from becoming entangled with patient or other elements of the system, since such a modification would provide

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a therapy device with controls mounted on one or both ends of the base to provide a self contained unit that is easy to operate without control wires becoming entangled, and since such a modification would provide remote controls (on/off) connected to the controls for controlling the cells remotely to allow more convenient control by a patient who has limited movement.

Claims 17-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ostrow in view of Russek as applied to claim 16 above, and further in view of McLeod et al.

Ostrow in view of Russek discloses the claimed invention with the cables being power and/or signal cables and an on/off switch connected to the cables, the cells having cables, field generator coils, insulation and coil enclosures except for the cell shielding. McLeod teaches that it is known to use shielding between components in each cell to prevent undesired interactions between components. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the therapy device as taught by Ostrow in view of Russek, with the shielding between components in each cell as taught by McLeod, since such a modification would provide a therapy device with shielding between components to prevent undesired interactions between components.

Claims 35, 37, and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ostrow, Ostrow in view of Russek, or Ostrow in view of McLeod, respectively.

Ostrow, Ostrow in view of Russek, or Ostrow in view of McLeod discloses the claimed invention but does not disclose expressly the power supply comprising battery power supplies mounted on opposite ends of the base, the signal generator and control mounted transverse from the other signal generator and control on the opposite end of the base, and the sensors sensing multiple different parameters indicative of the wound to be treated. It would have been obvious

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to one having ordinary skill in the art at the time the invention was made to modify the therapy device as taught by Ostrow or Ostrow in view of McLeod, with the power supply comprising power supplies and the sensors sensing different parameters since it was known in the art that therapy devices use a power supply comprising multiple power supplies to provide a redundant power system and/or to allow one device to operate when another device loses power and since it was known in the art that therapy devices use sensors sensing different parameters to provide a more accurate indication of the therapy being used and the wound being treated to provide feedback to the system to allow a more effective therapy to be delivered.

In addition, it would have been an obvious matter of design choice to a person of ordinary skill in the art to modify the therapy device as taught by Ostrow or Ostrow in view of Russek with the power supply comprising battery power supplies mounted on opposite ends of the base and the signal generator and control mounted transverse from the other signal generator and control on the opposite end of the base, because Applicant has not disclosed that the power supply comprising battery power supplies mounted on opposite ends of the base and the signal generator and control mounted transverse from the other signal generator and control on the opposite end of the base provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with the power supplies mounted on one end of the base and the signal generator and control mounted in the same plane as taught by Ostrow or Ostrow in view of Russek, because they provide an easy to use therapy device with controls and power supplies that are uncomplicated to use and service.

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Therefore, it would have been an obvious matter of design choice to modify Ostrow or Ostrow in view of Russek to obtain the invention as specified in the claim(s).

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. McLeod, 5518496, is one showing of many of and varying the type, frequency, pulse characteristics, etc of the energy according to the size and type of wounded tissue and proximity of the cell to the wounded tissue to provide an effective therapy. Russek and Browner are two showing of many showing the use of controls mounted and connected to the base.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to George R Evanisko whose telephone number is 703 308-2612. The examiner can normally be reached on M-F 6:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes can be reached on 703 308-5181. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

GRE
April 4, 2004

GEORGE R. EVANISKO
PRIMARY EXAMINER
4/4/4